Karpal Singh a/l Ram Singh v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–10 OF 2012
ZULKEFLI CJ (MALAYA), HASHIM YUSOFF, ABDULL HAMID EMBONG, SURIYADI AND HASAN LAH FCJJ
21 APRIL 2012

Civil Procedure — Striking out — Application for — Application to strike out appellant's appeal to Federal Court — Whether impugned decision of Court of Appeal was final order — Whether decision non-appealable — Courts of Judicature Act 1964 s 3

Constitutional Law — Courts — Jurisdiction of Federal Court — Whether decision of Court Appeal non-appealable — Fundamental liberties — Equality before the law — Whether appellant's constitutional rights had been violated — Whether definition of 'decision' under s 3 of the Courts of Judicature Act 1964 led to unequal treatment of appellant's case — Courts of Judicature Act 1964 s 3 — Federal Constitution art 8(1)

The appellant was charged with having contravened s 4(1) of the Sedition Act 1948. The charge was based on certain seditious statements made by the appellant in a media conference held in his office. At the close of the prosecution case, the High Court judge acquitted the appellant without his defence being called. The prosecution appealed to the Court of Appeal, which set aside the acquittal, directed the case transmitted back to the High Court and ordered the defence to be called. The appellant filed an appeal to the Federal Court against the decision of the Court of Appeal. In response the prosecution filed the present notice of motion for an order that the appellant's appeal be struck out in limine on the grounds that the decision of the Court of Appeal was not an appealable decision. The prosecution argued that when the Court of Appeal decided that a prima facie case had successfully been established at the close of the prosecution case that decision did not finally dispose of the rights of the parties and only after hearing the defence of the appellant could the High Court make a final decision. It was thus the prosecution's case that without the finality element in the decision of the Court of Appeal the appeal was incompetent and hence non-appealable. The appellant opposed the prosecution's application and submitted that his constitutional rights within the context of art 8(1) of the Federal Constitution ('Constitution')had been violated. It was the appellant's argument that had the prosecution's appeal been dismissed that decision would have been appealable whereas the Court of Appeal's decision in this case was considered not

appealable by virtue of the definition of 'decision' under s 3 of the Courts of Judicature Act 1964 ('CJA'). The appellant thus submitted that this inequality was inconsistent with the principle of equality enshrined in art 8(1). It was agreed that the prosecution's application to strike out the appellant's appeal would be heard first, as, in the event it was allowed there would be no necessity to hear the appellant's appeal.

Held, allowing the prosecution's application and accordingly dismissing the appellant's appeal:

(1) Section 3 of the CJA excludes any ruling made in the course of a trial which did not finally dispose of the rights of the parties in the trial. In order for a decision to be final, the defence must first be heard and after a maximum evaluation of the total evidence a decision would eventually be made, which then triggered the right of appeal (see paras 16 & 19).

(2) In practical terms, the appellant was not disadvantaged by the alleged unequal treatment produced by the word 'decision' in s 3 of the CJA. The appellant was not prevented from filing an appeal at the end of the trial and including in the petition of appeal his dissatisfaction with any ruling made in the course of the trial. Since the order of the Court of Appeal was not a final order, the appeal filed by the appellant was non-appealable and hence incompetent (see paras 23–24).

(3) It is settled law that the equality provision in art 8(1) of the Constitution was not absolute but qualified. As such, this court was unable to agree with the appellant that the question posed by him was a novel question or that his rights under art 8(1) had been violated (see para 28).

[Bahasa Malaysia summary

Perayu dituduh melanggar s 4(1) Akta Hasutan 1948. Tuduhan tersebut adalah berdasarkan atas penyataan-penyataan hasutan yang tertentu yang dibuat oleh perayu di dalam persidangan media yang diadakan di pejabatnya. Pada akhir kes pendakwaan, hakim Mahkamah Tinggi membebaskan perayu tanpa pembelaannya dipanggil. Pihak pendakwaan merayu kepada Mahkamah Rayuan, yang mana mengenepikan pembebasan tersebut, mengarahkan kes dihantar kembali ke Mahkamah Tinggi dan diarahkan pembelaan dipanggil. Perayu memfailkan rayuan ke Mahkamah Persekutuan terhadap keputusan Mahkamah Rayuan. Dalam menjawab, pihak pendakwaan memfailkan notis usul ini untuk perintah yang rayuan perayu dibatalkan limine atas alasan-alasan bahawa keputusan Mahkamah Rayuan bukan keputusan yang boleh dirayu. Pihak pendakwaan berhujah bahawa apabila Mahkamah Rayuan memutuskan bahawa kes prima facie berjaya dibuktikan di akhir kes pihak pendakwaan keputusan tersebut tidak akhirnya melupuskan hak-hak pihak-pihak dan hanya selepas pendengaran pembelaan perayu Mahkamah Tinggi boleh membuat keputusan akhir. Oleh itu kes pihak pendakwaan tanpa

unsur muktamad dalam keputusan Mahkamah Rayuan, rayuan tersebut tidak kompeten dan maka tidak boleh dirayu. Perayu membantah permohonan pihak pendakwaan dan menghujah bahawa hak-hak berpelembagaannya dalam konteks perkara 8(1) Perlembagaan Persekutuan ('Perlembagaan') telah dicabuli. Adalah hujahan perayu bahawa jika rayuan pihak pendakwaan ditolak keputusan tersebut boleh dirayukan sebaliknya keputusan Mahkamah Rayuan dalam kes ini dipertimbangkan sebagai tidak boleh dirayu berdasarkan definisi 'decision' di bawah s 3 Akta Mahkamah Kehakiman 1964 ('AMK'). Perayu oleh itu berhujah bahawa ketidaksamaan adalah tidak konsisten dengan prinsip kesamaan yang ditetapkan di dalam perkara 8(1). Ia telah dipersetujui bahawa permohonan pihak pendakwaan untuk membatalkan rayuan perayu akan didengar dahulu, seperti, jika ia dibenarkan tidak perlu untuk mendengar rayuan perayu.

Diputuskan, membenarkan permohonan pihak pendakwaan dan selanjutnya menolak rayuan perayu:

(1) Seksyen 3 AMK mengecualikan apa-apa perintah yang dibuat dalam perbicaraan yang mana tidak secara muktamad hak-hak pihak-pihak dalam perbicaraan. Supaya keputusan menjadi muktamad, pembelaan mesti didengar dahulu dan selepas penilaian maksimum keseluruhan keterangan, keputusan akan akhirnya dibuat, yang kemudiannya mencetuskan hak merayu (lihat perenggan 16 & 19).

(2) Dalam terma praktik, perayu tidak terjejas oleh dakwaan perlakuan yang tidak sama yang diperuntukkan daripada perkataan 'decision' dalam s 3 AMK. Perayu tidak dihalang daripada memfailkan rayuan di akhir perbicaraan dan termasuk dalam petisyen rayuan ketidakpuasan hatinya dengan apa-apa perintah yang dibuat dalam perbicaraan. Memandangkan perintah Mahkamah Rayuan bukan perintah muktamad, rayuan yang difailkan oleh perayu tidak boleh dirayu dan maka tidak kompeten (lihat perenggan 23–24).

(3) Adalah undang-undang nyata bahawa peruntukan kesamaan di dalam perkara 8(1) Perlembagaan bukan mutlak tetapi berkelayakan. Oleh itu, mahkamah ini tidak dapat bersetuju dengan perayu bahawa soalan yang diajukan olehnya adalah soalan novel atau haknya di bawah perkara 8(1) telah dicabuli (lihat perenggan 28).]

Notes

For cases on application for striking out, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7478–7481.

For cases on validity on impugned legislation, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2551–2556.

Cases referred to

Abdul Ghani bin Ali @ Ahmad & Ors v PP [2001] 3 MLJ 561, FC (refd)
Armand v Home Secretary and Minister of Defence of Royal Netherlands Government [1943] AC 147, HL (refd)
Dato' Seri Anwar Ibrahim v PP [2011] 2 CLJ 845, CA (refd)
Dato' Seri Anwar Ibrahim v PP [2010] 6 MLJ 585; [2010] 9 CLJ 625, FC (refd)
Datuk Haji Harun bin Haji Idris v PP [1977] 2 MLJ 155, FC (refd)
Lee Kwan Woh v PP [2009] 5 MLJ 301; [2009] 5 CLJ 631, FC (refd)
Malaysia British Assurance Berhad v Chung Choi Yoke [2003] 4 AMR 124, HC (refd)
Maleb bin Su v PP; Cheak Yoke Thong v PP [1984] 1 MLJ 311; [1984] 2 CLJ (Rep) 232 (refd)
PP v Khong Teng Khen & Anor [1976] 2 MLJ 166, FC (refd)
PP v Letchumanan Suppiah [2009] 5 MLJ 597; [2009] 5 CLJ 652, FC (refd)
PP v Mohd Fazil bin Awaludin [2009] 7 MLJ 741; [2009] 2 CLJ 862, HC (refd)
Regina v Collins [1970] 1 QB 710, CA (refd)
Rex v Bryant and Dickson (1946) 31 Cr App R 146 (refd)
Saad bin Abas & Anor v PP [1999] 1 MLJ 129, CA (refd)
Seaman v Burley [1896] 2 QB 344, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 86, 87, 87(1)
Criminal Procedure Code s 418A(1)
Federal Constitution arts 8, 8(1), (5), 121(2), 128(3), 153, 160(2)
Sedition Act 1948 ss 3(1)(f), 4(1)

Appeal from: Criminal Appeal No W–05–233 of 2010 (Court of Appeal, Putrajaya)

Karpal Singh (Jagdeep Singh Deo, Gobind Singh Deo, Sangeet Kaur Deo, Ramkarpal Singh and RSN Rayer with him) (Karpal Singh & Co) for the appellant.
Noorin bt Badaruddin (Azlina bt Rasdi with him) (Attorney General's Chambers) for the respondent.

Suriyadi FCJ (delivering judgment of the court):

[1] In a media conference held at his office, Mr Karpal Singh (the appellant), was alleged to have uttered seditious statements that contravened s 4(1) of the Sedition Act 1948, and was charged at the sessions court. The case was then transferred to the High Court. The charge reads as follows:

Bahawa kamu pada 6 Februari 2009 jam antara 12.00 tengahari dan 12.30 petang di Tetuan Karpal Singh & Co. yang beralamat No. 67, Jalan Pudu Lama, dalam Daerah Dang Wangi, Wilayah Persekutuan Kuala Lumpur dalam satu sidang akhbar telah menyebut kata-kata menghasut (transkrip ucapan dilampirkan sebagai LAMPIRAN 'A' kepada pertuduhan ini dan kata-kata menghasut digariskan); dan oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 4(1)(b) Akta Hasutan 1948 (Akta 15) dan boleh dihukum di bawah seksyen 4(1) Akta yang sama.

[2] From the evidence gleaned of the prosecution's case the facts of the case are as follows. On 6 February 2009 at about 11.30am the appellant had called for a media conference at his office at Jalan Pudu Lama, Kuala Lumpur. Several members of the press together with cameramen were in attendance. In that media conference the appellant read out a press statement and later distributed copies of them. The second segment saw a question and answer session, which was also recorded. Recordings of the media conference were aired by RTM at 6pm and 9pm. TV3 transmitted it to the public at 8pm also on the same day. Witnesses who saw and heard the media conference aired on TV subsequently filed police reports.

[3] Altogether 103 police reports of the appellant's media conference were filed resulting in a police investigation and culminating with the appellant being charged at the sessions court on 17 March 2009. On the request of the prosecution the case was transferred to the High Court pursuant to s 418A(1) of the Criminal Procedure Code. After the calling of 19 witnesses, and at the end of the prosecution's case, the learned judge acquitted the appellant on 11 June 2011. Following an appeal by the public prosecutor, the Court of Appeal comprising Mohamad Apandi bin Ali JCA, Clement Allan Skinner JCA and Ahmad bin Hj Maarop JCA (as he then was), set aside the acquittal and ordered the defence be called. The Court of Appeal also directed the case be transmitted back to the High Court. The grounds of judgment were subsequently prepared in Bahasa Malaysia by Ahmad bin Hj Maarop JCA.

[4] Being dissatisfied with the Court of Appeal's order the appellant filed an appeal to the Federal Court vide notice dated 25 January 2012. Three substantive grounds were supplied, namely that the Court of Appeal erred when it decided that s 3(1)(f) of the Sedition Act 1948 was constitutional having regard to the facts and circumstances prevailing in the appeal, that the Court of Appeal went beyond its appellate jurisdiction when it made specific and final findings regarding the defence which had yet to be heard, and thirdly there was corum failure as Clement Allan Skinner JCA, despite not being conversant in Bahasa Malaysia was empanelled.

[5] The notice of appeal clarified that despite both the prosecution and the

defence counsel having submitted in English, Clement Allan Skinner JCA could not have comprehended Ahmad bin Hj Maarop JCA's grounds of judgment, as they were in Bahasa Malaysia.

[6] In response to the appeal by the appellant, the public prosecutor filed a notice of motion (encl 6(a)), praying that the appellant's appeal be struck out in limine, and the Court of Appeal's order be complied with, without any delay. The basis of the application was that the definition of 'decision' under s 3 of the Courts of Judicature Act 1964 ('CJA') demanded an element of finality, and as the decision appealed against was one made at the end of the prosecution's case, with the consequential order that the defence be heard, the finality element was absent.

[7] On the appeal day, we were confronted with two opposing but interconnected enclosures viz encl 10(a), which concerned the appeal of the appellant, and encl 6(a) filed by the public prosecutor wanting to strike out encl 10(a). It was logical that encl 6(a) be heard first, as, in the event it was allowed, no necessity arose thereafter to have encl 10(a) ventilated.

[8] The learned deputy public prosecutor ('DPP') in a sequential manner, followed the path carved out in the supporting affidavit (encl 6(b)). In support of the submission the learned DPP referred to ss 3 and 87(1) of the CJA, explanatory notes in the bill to explain the purpose of the amendment of s 3 of the Act and case authorities like *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 6 MLJ 585, *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2011] 2 CLJ 845, *Saad bin Abas & Anor v Public Prosecutor* [1999] 1 MLJ 129, *Public Prosecutor v Letchumanan Suppiah* [2009] 5 MLJ 597; [2009] 5 CLJ 652, *Regina v Collins* [1970] 1 QB 710, *Maleb bin Su v Public Prosecutor; Cheak Yoke Thong v Public Prosecutor* [1984] 1 MLJ 311; [1984] 2 CLJ (Rep) 232 and *Lim Hung Wang and 4 Others v Pendakwa Raya (Dalam Bidang Kuasa Asal)* Guaman No BKA-2011.

[9] After adducing some relevant facts of the matter before us, the learned DPP zeroed in on the crux of the prosecution's application, in that when the Court of Appeal decided that a prima facie case had successfully been established such decision tantamount to a High Court decision. The next stage would see the High Court hearing the defence of the appellant and at the end of it only would a final decision of the case be made. Without the finality element in the decision of the Court of Appeal the appeal therefore was incompetent and hence non-appealable.

[10] The appellant on the other hand, instead of responding to the allegation head-on as argued by the learned DPP, took a different approach. He, as reflected in his written submission, began by stating that opposition to

encl 6(a) was founded on a novel argument, never raised before in the Federal Court. The gist of his argument is found at para 5 of the appellant's affidavit in reply, which reads:

> Bagi perenggan 4-5 affidavit tersebut, saya dengan sesungguhnya menyatakan bahawa rayuan saya kepada Mahkamah Persekutuan terhadap perintah Mahkamah Rayuan bertarikh 20.1.2012 adalah competent atas sebab jika sebaliknya itu adalah bertentangan dengan peruntukan artikel 8(1) Perlembagaan Persekutuan yang menyatakan, 'All persons are equal before the law and entitled to the equal protection of the law'.

[11] In clarification of the abovementioned paragraph, the appellant after alluding to art 8(1) of the Federal Constitution ('the Constitution'), submitted that had the public prosecutor's appeal been dismissed by the Court of Appeal, such an order would have been a final order and the public prosecutor would have had the right to appeal to the Federal Court. On the other hand if the public prosecutor's appeal had been allowed, followed by the consequential order that the defence be called, such order was not a final order and hence not appealable by the appellant. Mr Karpal questioned whether the imperative provisions of art 8(1) of the Constitution had been violated. He submitted that this predicament 'compounds the inequality of the position and consequential contravention of the provisions of article 8(1) of the Federal Constitution'. In support of his alleged novel argument, the civil case of *Malaysia British Assurance Berhad v Chung Choi Yoke* [2003] 4 AMR 124 was referred to, a case decided by Low Hop Bing J (as he then was). In that case art 8(1) of the Constitution had indeed come under scrutiny. The appellant ventilated that the position of *Malaysia Assurance Bhd v Chung Choi Yoke* was on all fours with his appeal. He then read out a portion of p 129, which reads:

> Equality before the law
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> The submission for the defendant seems to show a fallacy in that the upholding thereof would result in an unequal situation whereby a decision allowing an O 26A application is appealable while a decision dismissing it is not appealable. That inequality is obviously repugnant to or inconsistent with the principle of equality as enshrined in art 8(1) of the Federal Constitution which reads as follows:
>
> All persons are equal before the law and entitled to the equal protection of the law.

[12] Without the need to repeat the appellant's submission, in a nutshell he alleged that his rights within the context of art 8(1) of the Constitution had been violated by the inequality treatment. Apart from alluding to some of the cases mentioned by the prosecution, in aid of his submission the appellant also referred to *Public Prosecutor v Mohd Fazil bin Awaludin* [2009] 7 MLJ 741; [2009] 2 CLJ 862, *Rex v Bryant and Dickson* (1946) 31 Cr App R 146, *Lee*

Kwan Woh v Public Prosecutor [2009] 5 MLJ 301; [2009] 5 CLJ 631, *Abdul Ghani bin Ali @ Ahmad & Ors v Public Prosecutor* [2001] 3 MLJ 561 and *Public Prosecutor v Khong Teng Khen & Anor* [1976] 2 MLJ 166.

[13] It was obvious that we had two issues to resolve, first, whether the appellant was barred from appealing against the decision of the Court of Appeal as there was no finality to that decision, and secondly whether his constitutional right had been violated in the circumstances of the case, by virtue of the definition (of 'decision' under s 3 of the CJA 1964), which led to the unequal treatment of the appellant's case. At the conclusion of the hearing of encl 6(a) we allowed the prosecution's application and accordingly dismissed the appellant's appeal.

[14] We now supply our grounds for allowing encl 6(a) and dismissing the appeal. To avoid confusion, and ensure a smooth flow of our reasoning, we shall deal with our treatment of encl 6(a) first, to be followed thereafter by the constitutional complaint. Limiting our reasoning to criminal appeals from the Court of Appeal, art 121(2) of the Constitution provides the Federal Court that jurisdiction. The jurisdiction of the Federal Court to determine appeals from the Court of Appeal shall be such as may be provided for by federal law (art 128(3); see also art 160(2)). The CJA which is a federal law sets out the jurisdiction and powers of the Federal Court on criminal appeals (see ss 86 and 87). For purposes of the matter before us s 87 of the CJA is relevant and it reads:

> 87 Jurisdiction to hear and determine criminal appeals
>
> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceeding of the Federal Court in respect of appeals from the Court of Appeal.

[15] This provision requires that the matter appealed against must be criminal in nature, the 'decision' to emanate from the Court of Appeal in its appellate jurisdiction and decided earlier by the High Court in its original jurisdiction. Original jurisdiction generally means that the High Court considered the matter in the first instance as opposed to its appellate jurisdiction over a matter heard in the first instance by a court below (*Janab's Key to Criminal Procedure Evidence Advocacy and Professional Ethics* p 46).

[16] Section 3 of the CJA defines 'decision' to mean judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties. It is not disputed here that the appeal relates to a criminal matter, as witnessed by the procedure adhered to, and in the event of a conviction, may be sentenced

to imprisonment or fined (*Seaman v Burley* [1896] 2 QB 344; *Armand v Home Secretary and Minister of Defence of Royal Netherlands Government* [1943] AC 147; *Hamid's on Criminal Procedure*).

[17] The rationale for non-final decisions being non-appealable is primarily geared towards the speedy disposal of cases; such a policy prejudices nobody in light of the many complaints of ageing cases before. The explanatory notes, clarifying the amendment of s 3 of the CJA introduced by the Amendment Act A1031 of 1998 reads:

> Pada masa ini, semasa mendengar kes, jika mahkamah membuat keputusan tentang kebolehterimaan apa-apa keterangan atau dokumen, pihak yang tidak berpuas hati boleh memfailkan rayuan. Jika rayuan sedemikian difailkan, mahkamah terpaksa memberhentikan pendengaran kes itu sementara menanti keputusan rayuan itu oleh mahkamah atasan. Ini menyebabkan pendengaran itu lambat selesai, lebih-lebih lagi apabila rayuan difailkan terhadap tiap-tiap keputusan yang dibuat oleh mahkamah bicara. Pindaan ini dicadangkan untuk membantu mempercepat pendengaran kes di mahkamah bicara.

[18] From the above explanation it is obvious that Parliament is not oblivious to mid-stream appeals that tend to stall proceedings and delay speedy completion of cases. With justice not being served by unnecessary delays, what with the amended meaning of 'decision' being crystal clear, such technical appeals that have the effect of stalling hearings, are now things of the past (see *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 6 MLJ 585; *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2011] 2 CLJ 845). No appeal is permitted if viewed as incompetent and precluded by law, and with the facts as they were before us, we agree with the learned DPP that there was no finality in the decision of the Court of Appeal.

[19] In order for a decision to be final, the defence must first be heard, and after a maximum evaluation of the total evidence a decision eventually be made. It is at that conclusive stage, when the fate of the appellant is known, the right of appeal is triggered (*Saad bin Abas & Anor v Public Prosecutor* [1999] 1 MLJ 129; *Maleb bin Su v Public Prosecutor; Cheak Yoke Thong* [1984] 1 MLJ 311; [1984] 2 CLJ (Rep) 232). In *Public Prosecutor v Letchumanan Suppiah* [2009] 5 MLJ 597; [2009] 5 CLJ 652 Zulkefli Makinudin FCJ (as His Lordship then was) opined:

> (1) A question that needed to be answered at this stage was whether the accused could, in the course of the appeal by the public prosecutor before this court against the decision of the Court of Appeal in calling for the accused's defence of possession and not trafficking of the said drugs, challenging that decision through the back door by submitting in the course of his reply to the prosecution's appeal that he should have been acquitted. This question should be answered in the negative for the simple reason that what the law has precluded the accused from appealing must

be given effect. To allow otherwise would mean providing the accused with an avenue of appeal at this stage contrary to what the law has prohibited. Section 92 of the Courts of Judicature Act 1964 ('CJA') gives the Federal Court a very wide power when it hears an appeal. However that power can only be exercised subject to s 87 of the CJA that is the appeal must be competent before the court. The word 'any' before the word 'decision' in s 87 of the CJA must be confined to a decision which is final …

[20] A scrutiny of the scope of the term 'decision' in s 3 of the CJA reveals that its definition does not extend to the types of 'judgments or orders' which can be termed as 'interlocutory'. In other words, if a judgment or order is not final, in the sense that it does not finally dispose of the rights of the parties in the trial, then it would not fall within the definition of the word 'decision' under s 3 of the CJA, and thus not appealable. To quote Arifin Zakaria CJM (as His Lordship then was) in *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 6 MLJ 585 at pp 593–594; [2010] 9 CLJ 625 at p 634:

The term 'interlocutory' used therein is specifically in reference to a civil matter as opposed to a criminal matter (see para 501 of *Halsbury's Laws of England*, (4th Ed), Vol 26. It includes an order made before and after judgment in a matter before the court. Whereas what s 3 of the CJA seeks to exclude from the term 'decision' is a ruling made in the course of a trial or hearing which does not finally dispose of the rights of the parties. In other words, the ruling must by definition be made in the course of a trial or hearing and not before or after as envisaged in the definition of 'interlocutory'. In fact, in *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010]2 MLJ 312; [2010] 4 CLJ 565, this court was asked to decide whether an order made by the trial judge pursuant to s 51 and or s 51A of the Criminal Procedure Code is appealable. In that case, this court held that the order was a final order as it finally disposed of the rights of the parties and therefore it was appealable. Further, the court held that the order was not made in the course of a trial. For that reason, the order made by the trial judge does not fall within the word 'decision' as defined in s 3 of the CJA. No doubt that the application under s 51 and/or s 51A is an 'interlocutory' application as defined in *Halsbury*. *Therefore it is highly inaccurate to say that in a criminal trial, all decisions on interlocutory applications are not appealable.* (Emphasis added.)

[21] A dissatisfied party is never deprived either of his right to appeal after the conclusion of a trial, in the event he feels aggrieved with the ruling made in the course of the trial, as that supposed error could be raised in the appeal proper. Again Arifin Zakaria CJ in *Dato' Seri Anwar Ibrahim v Public Prosecutor* opined:

The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.

[22] With the definition of the word 'decision' being unambiguous no courts should hesitate to give effect to it. Bindra in *Interpretation of Statutes* at p 395 wrote:

> When the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise … If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provisions. The courts are enjoined to take the words as used by the legislature and to give them the meaning which naturally implies.

[23] From the above analysis, in practical terms, the appellant is not disadvantaged by the alleged unequal treatment produced by the word 'decision'. Under s 3 of the CJA the appellant is not prevented from filing an appeal at the end of the trial, and to include in the petition of appeal of any dissatisfaction with any ruling, made in the course of the trial. Such preclusions of appeals mid-stream would lead to the inevitable speedy disposal of cases resulting in an increase in the efficiency of court's administration, and without the appellant's right of appeal being compromised in any way.

[24] So, on the first issue alone, we decided that the order of the Court of Appeal was not a final order, hence non-appealable. The appeal filed by the appellant therefore was incompetent.

[25] Having decided that the impugned decision of the Court of Appeal was non-appealable, we now discuss the submission by the appellant whether his constitutional rights under art 8(1) had been violated by virtue of the definition of 'decision' under s 3 of the CJA. At the risk of repeating, his complaint was the alleged unequal treatment accorded to him vis-a-vis the prosecution, by the preclusion of him filing an appeal. Under the sub-clauses of art 8(1) of the Constitution are legislated, amongst others, that 'there shall be no discrimination against citizens on the ground only of religion, race, descent, birth or gender in any law or in the appointment to any office or employment under a public authority …' etc. There shall also be no discrimination in favour of any person on the ground that he is a subject of the ruler of any state, and there shall be no discrimination against any person on the ground that he is a resident or carrying on business in any part of the Federation outside the jurisdiction of the public authority. Indeed the promulgation of art 8 is a written expression of our acceptance that all persons are equal before the law and entitled to the equal protection of the law. This article is non-discriminatory; if discriminatory it is bad law and thus void, unless allowed by law (art 8(5) and art 153).

[26] The next question to resolve is whether equality is absolute in that all laws must be uniformly applied to all persons in all circumstance? We are of the

view that to enforce equal treatment would in reality result in unequal results, and simultaneously infringing our moral values borne from socially unacceptable and debased results. On this point Kevin YL Tan & Thio Li-ann in *Constitutional Law in Malaysia & Singapore*, (3rd Ed), had occasion to write:

> Equal treatment under the law does not imply that all people should be treated alike. People differ in terms of abilities, personalities and culture. It would defy common sense to treat a child in the same manner as an adult when it comes to matters of voting or criminal culpability. All the law requires is that like persons in like circumstances should be treated alike. Under the doctrine of classification, one may in certain instances discriminate between classes but no one within a particular class should be singled out for discriminatory treatment.

[27] Still on the equality provision Suffian LP in *Datuk Haji Harun bin Haji Idris v Public Prosecutor* [1977] 2 MLJ 155 had remarked:

> The equality provision is not absolute. It does not mean that all laws must apply uniformly to all persons in all circumstances everywhere.
>
> The equality provision is qualified. Specifically, discrimination is permitted within cl (5) of art 8 and within art 153 …
>
> We adhere to what was said in *Public Prosecutor v Khong Teng Khen* at p 170:
>
> > The principle underlying art 8 is that a law must operate alike on all persons under like circumstances, not simply that it must operate alike on all persons in any circumstances, nor that it 'must be general in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons … for the purpose of legislation', *Kedar Nath v State of West Bengal* AIR 1953 SC 404 at p 406.
> >
> > In my opinion, the law may classify persons into children, juveniles and adults, and provide different criteria for determining their criminal liability or the mode of trying them or punishing them if found guilty; the law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories and provide that some offences be triable in a magistrate's court, others in a sessions court, and yet others in the High Court; the law may provide that certain offences be triable even in a military court; fiscal law may divide a town into different areas and provide that ratepayers in one area pay a higher or lower rate than those of another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate art 8. *All that an art 8 guarantees is that a person in one class should be treated the same as another person in the same class,* so that a juvenile must be tried like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and a millionaire the same income tax as another millionaire, and so on… (Emphasis added.)

[28] With such abundance of authorities being made available to us, we are unable to agree with the suggestion of the appellant that the question posed by him is a novel question, or for that matter his rights under art 8 of the Constitution had been violated. With the meaning of 'decision' being unambiguous and having failed to find his supposed right under art 8(1) of the Constitution violated, we unanimously allowed encl 6(a). The consequential order was that the appeal filed by the appellant was dismissed.

Prosecution's application allowed and accordingly appellant's appeal dismissed.

Reported by Kohila Nesan